

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee solicits comment on the following proposals by June 30, 2012. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of new instructions for use in cases alleging an invasion of privacy.

**[NEW] M CIV JI CHAPTER 114
INVASION OF PRIVACY**

**[NEW] M CIV JI 114.01
INVASION OF PRIVACY—INTRUSION INTO ANOTHER’S PRIVATE
AFFAIRS—ELEMENTS**

Plaintiff claims that defendant is responsible for invasion of [his / her] privacy. The claim here is that defendant intruded into plaintiff’s private affairs. The elements of this claim are the following:

- a. the existence of a secret and private subject matter,
- b. a right possessed by the plaintiff to keep that subject matter private, and
- c. that defendant, without consent, obtained information about that subject matter through some method objectionable to a reasonable person.

It is not necessary that the information be revealed or made available to others in order for there to be an invasion of privacy.

Comment

Lewis v Legrow, 258 Mich App 175 (2003); *Dalley v Dykema Gossett*, 287 Mich App 296 (2010).

[NEW] M CIV JI 114.02

**INVASION OF PRIVACY—INTRUSION INTO ANOTHER’S PRIVATE AFFAIRS
—BURDEN OF PROOF**

Plaintiff has the burden of proving each of the following:

- a. the existence of a secret and private subject matter,
- b. a right possessed by the plaintiff to keep that subject matter private, and
- c. that defendant, without consent, obtained information about that subject matter through an objectionable method.

Your verdict will be for the plaintiff if the plaintiff has proved all of those elements. Your verdict will be for the defendant if the plaintiff has failed to prove any one of those elements.

[NEW] M CIV JI 114.03

**INVASION OF PRIVACY—PUBLIC DISCLOSURE OF PRIVATE FACTS—
ELEMENTS**

Plaintiff claims that defendant is responsible for invasion of [his / her] privacy. The claim here is that defendant publicly disclosed private facts about plaintiff. The elements of this claim are the following:

- a. the public disclosure of private information about the plaintiff that is not already a matter of public record or otherwise open to the public,
- b. that was highly offensive to a reasonable person, and
- c. that was of no legitimate concern to the public.

It is not necessary that the disclosure be made to the general public. It is sufficient if the disclosure is made to one or more persons such as fellow employees, club members, church members, family, neighbors or others whose knowledge of the facts would be embarrassing to the plaintiff.

Comment

Beaumont v Brown, 401 Mich 80 (1977) *overruled in part on other grounds*, *Bradley v Saranac Bd of Education*, 455 Mich 285 (1997); *Duran v Detroit News*, 200 Mich App 622 (1993); *Fry v Ionia Sentinel-Standard*, 101 Mich App 725 (1980).

[NEW] M CIV JI 114.04

**INVASION OF PRIVACY— PUBLIC DISCLOSURE OF PRIVATE FACTS —
BURDEN OF PROOF**

Plaintiff has the burden of proving each of the following:

- a. that defendant publicly disclosed private information about the plaintiff that was not already a matter of public record or otherwise open to the public,
- b. that was highly offensive to a reasonable person, and
- c. that was of no legitimate concern to the public.

Your verdict will be for the plaintiff if the plaintiff has proved all of those elements. Your verdict will be for the defendant if the plaintiff has failed to prove any one of those elements.

[NEW] M CIV JI 114.05

**INVASION OF PRIVACY—PUBLICITY WHICH PLACES PLAINTIFF IN A
FALSE LIGHT—ELEMENTS**

Plaintiff claims that defendant is responsible for invasion of [his / her] privacy. The claim here is that defendant placed plaintiff in a false light in the public eye. The elements of this claim are the following:

- a. a disclosure to the general public or to a large number of people,
- b. of information that was highly objectionable to a reasonable person, which attributed to plaintiff characteristics, conduct, or beliefs, that were false and placed plaintiff in a false light, and
- c. the defendant must have had knowledge of or acted in reckless disregard as to the falsity of the disclosed information and the false light in which the plaintiff would be placed.

Note on Use

If the plaintiff is a public figure, actual malice must be proven by clear and convincing evidence. *Battaglieri v Mackinac Center*, 261 Mich App 296 (2004). See MCJI 8.01. In *Collins v Detroit Free Press, Inc.*, 245 Mich. App. 27, 32 (2001), the Michigan Court of Appeals held that “[t]he First Amendment requires courts to determine whether the plaintiff is a public or private figure....” *Collins* involved allegations of both defamation and false light.

Comment

Dadd v Mount Hope Church, 486 Mich 857 (2010); *Duran v Detroit News*, 200 Mich App 622 (1993); *Battaglieri v Mackinac Center*, 261 Mich App 296 (2004);

Early Detection Center, PC v New York Life Ins Co, 157 Mich App 618, 630 (1986).

[NEW] M CIV JI 114.06

INVASION OF PRIVACY— PUBLICITY WHICH PLACES PLAINTIFF IN A FALSE LIGHT—BURDEN OF PROOF

Plaintiff has the burden of proving each of the following:

- a. that defendant disclosed to the general public or a large number of people,
- b. information that was unreasonable and highly objectionable to a reasonable person, which attributed to plaintiff characteristics, conduct, or beliefs, that were false and placed plaintiff in a false light, and
- c. that defendant must have had knowledge of or acted in reckless disregard as to the falsity of the published information and the false light in which the plaintiff would be placed.

Your verdict will be for the plaintiff if the plaintiff has proved all of those elements. Your verdict will be for the defendant if the plaintiff has failed to prove any one of those elements.

Note on Use

If the plaintiff is a public figure, actual malice must be proven by clear and convincing evidence. *Battaglieri v Mackinac Center*, 261 Mich App 296 (2004).

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Alfred M. Butzbaugh

Reporter: Timothy J. Raubinger

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